

HOUSE BILL No. 1298

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-4-3.

Synopsis: Annexation. Makes contiguity requirements for annexation of a public highway or rights of way of a public highway apply only to annexations initiated by a municipality. Changes contiguity requirements so that property adjacent to only one side of the public highway (instead of both sides) must be: (1) within the annexing municipality's boundaries; or (2) annexed by the same ordinance that annexes the public highway. Reduces the number of required public information meetings from six meetings to two meetings if the annexation is initiated by the landowners. Specifies that a landowner whose property is subject to a valid waiver of remonstrance may not file a remonstrance to the annexation. Establishes deadlines for: (1) the county auditor to forward remonstrance petitions to the annexing municipality; and (2) the annexing municipality to forward documentation regarding valid waivers of the right of remonstrance to the county auditor.

Effective: July 1, 2016.

Negele

January 12, 2016, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1298

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-4-3-1.5, AS AMENDED BY P.L.228-2015,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 1.5. (a) For purposes of this chapter, territory
4 sought to be annexed may be considered "contiguous" only if at least
5 one-eighth (1/8) of the aggregate external boundaries of the territory
6 coincides with the boundaries of the annexing municipality. In
7 determining if a territory is contiguous, a strip of land less than one
8 hundred fifty (150) feet wide that connects the annexing municipality
9 to the territory is not considered a part of the boundaries of either the
10 municipality or the territory.

11 (b) This subsection applies to an annexation for which an
12 annexation ordinance is adopted after June 30, 2015. **This subsection**
13 **and subsection (c) apply only to an annexation under section 3 or**
14 **4 of this chapter.** A public highway or the rights-of-way of a public
15 highway are contiguous to:

- 16 (1) the municipality; or
17 (2) property in the unincorporated area adjacent to the public



highway or rights-of-way of a public highway;
if the public highway or the rights-of-way of a public highway are
contiguous under subsection (a) and one (1) of the requirements in
subsection (c) is satisfied.

(c) A public highway or the rights-of-way of a public highway are
not contiguous unless one (1) of the following requirements is met:

(1) The municipality obtains the written consent of the owners of
all property:

(A) adjacent to the entire length of the part of the public
highway and rights-of-way of the public highway that is being
annexed; and

(B) not already within the corporate boundaries of the
municipality.

A waiver of the right of remonstrance executed by a property
owner or a successor in title of the property owner for sewer
services or water services does not constitute written consent for
purposes of this subdivision.

(2) All property adjacent to **at least one (1) side of** the entire
length of the part of the public highway or rights-of-way of the
public highway being annexed is already within the corporate
boundaries of the municipality.

(3) All property adjacent to **at least one (1) side of** the entire
length of the part of the public highway or rights-of-way of the
public highway being annexed is part of the same annexation
ordinance in which the public highway or rights-of-way of a
public highway are being annexed.

A municipality may not annex a public highway or the rights-of-way of
a public highway or annex territory adjacent to the public highway or
rights-of-way of a public highway unless the requirements of this
section are met.

SECTION 2. IC 36-4-3-1.7, AS ADDED BY P.L.228-2015,
SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2016]: Sec. 1.7. (a) This section applies only to an annexation
ordinance adopted after June 30, 2015. This section does not apply to
an annexation under section 5.1 of this chapter.

(b) Not earlier than six (6) months before a municipality introduces
an annexation ordinance, the municipality shall conduct an outreach
program to inform citizens regarding the proposed annexation. **For an
annexation under sections 3 or 4 of this chapter**, the outreach
program must conduct at least six (6) public information meetings
regarding the proposed annexation. **For an annexation under section
5 of this chapter, the outreach program must conduct at least two**



(2) public information meetings regarding the proposed annexation. The public information meetings must provide citizens with the following information:

(1) Maps showing the proposed boundaries of the annexation territory.

(2) Proposed plans for extension of capital and noncapital services in the annexation territory, including proposed dates of extension.

(3) Expected fiscal impact on taxpayers in the annexation territory, including any increase in taxes and fees.

(c) The municipality shall provide notice of the dates, times, and locations of the outreach program meetings. The municipality shall publish the notice of the meetings under IC 5-3-1, including the date, time, and location of the meetings, except that notice must be published not later than thirty (30) days before the date of each meeting. The municipality shall also send notice to each owner of land within the annexation territory not later than thirty (30) days before the date of the first meeting of the outreach program. The notice to landowners shall be sent by first class mail, certified mail with return receipt requested, or any other means of delivery that includes a return receipt and must include the following information:

(1) The notice must inform the landowner that the municipality is proposing to annex territory that includes the landowner's property.

(2) The municipality is conducting an outreach program for the purpose of providing information to landowners and the public regarding the proposed annexation.

(3) The date, time, and location of the meetings to be conducted under the outreach program.

(d) The notice shall be sent to the address of the landowner as listed on the tax duplicate. If the municipality provides evidence that the notice was sent: ~~by~~

(1) **by** certified mail, with return receipt requested or any other means of delivery that includes a return receipt; and

(2) in accordance with this section;

it is not necessary that the landowner accept receipt of the notice. If a remonstrance is filed under section 11 of this chapter, the municipality shall file with the court proof that notices were sent to landowners under this section and proof of publication.

(e) The notice required under this section is in addition to any notice required under sections 2.1 and 2.2 of this chapter.

SECTION 3. IC 36-4-3-11, AS AMENDED BY P.L.228-2015,



SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) This subsection applies only to an annexation for which an annexation ordinance was adopted before July 1, 2015. Except as provided in section 5.1(i) of this chapter and subsections (e) and (f), whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by:

- (1) at least sixty-five percent (65%) of the owners of land in the annexed territory; or
- (2) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within ninety (90) days after the publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place.

(b) This subsection applies only to an annexation for which an annexation ordinance was adopted before July 1, 2015. On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) This subsection applies only to an annexation for which an annexation ordinance was adopted before July 1, 2015. If the court determines that the remonstrance is sufficient, the court shall fix a time, within sixty (60) days after the court's determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(d) This subsection applies only to an annexation for which an annexation ordinance was adopted after June 30, 2015. If the requirements of section 11.3(c) or (after December 31, 2016) section 11.4 of this chapter are met, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located:

- (1) the signed remonstrances filed with the county auditor;
- (2) the county auditor's certification under section ~~11.2(g)~~ **11.2(i)** of this chapter;



(3) the annexation ordinance; and

(4) a statement of the reason why the annexation should not take place.

The remonstrance must be filed with the court not later than fifteen (15) business days after the date the county auditor files the certificate with the legislative body under section ~~11.2(g)~~ **11.2(i)** of this chapter. After a remonstrance petition is filed with the court, any person who signed a remonstrance may file with the court a verified, written revocation of the person's opposition to the annexation.

(e) If an annexation is initiated by property owners under section 5.1 of this chapter and all property owners within the area to be annexed petition the municipality to be annexed, a remonstrance to the annexation may not be filed under this section.

(f) This subsection applies only to an annexation for which an annexation ordinance is adopted before July 1, 2015. This subsection applies if:

(1) the territory to be annexed consists of not more than one hundred (100) parcels; and

(2) eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality.

An annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by at least seventy-five percent (75%) of the owners of land in the annexed territory as determined under subsection (b).

SECTION 4. IC 36-4-3-11.2, AS ADDED BY P.L.228-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11.2. (a) This section applies only to an annexation ordinance adopted after June 30, 2015.

(b) A remonstrance petition may be filed by an owner of real property that:

(1) is within the area to be annexed; ~~and~~

(2) was not exempt from property taxes under IC 6-1.1-10 or any other state law for the immediately preceding year; **and**

(3) is not subject to a valid waiver of remonstrance.

(c) A remonstrance petition must comply with the following in order to be effective:

(1) Each signature on a remonstrance petition must be dated, and the date of the signature may not be earlier than the date on which the remonstrance forms may be issued by the county auditor under subsection (e)(7).

(2) Each person who signs a remonstrance petition must indicate



the address of the real property owned by the person in the area to be annexed.

(3) A remonstrance petition must be verified in compliance with subsection (e).

(d) The state board of accounts shall design the remonstrance forms to be used solely in the remonstrance process described in this section. The state board of accounts shall provide the forms to the county auditor in an electronic format that permits the county auditor to copy or reproduce the forms using:

(1) the county auditor's own equipment; or

(2) a commercial copying service.

The annexing municipality shall reimburse the county auditor for the cost of reproducing the remonstrance forms.

(e) The county auditor's office shall issue remonstrance forms accompanied by instructions detailing all of the following requirements:

(1) The closing date for the remonstrance period.

(2) Only one (1) person having an interest in each single property as evidenced by the tax duplicate is considered an owner of property and may sign a remonstrance petition. A person is entitled to sign a petition only one (1) time in a remonstrance process, regardless of whether the person owns more than one (1) parcel of real property.

(3) An individual may not be:

(A) compensated for; or

(B) reimbursed for expenses incurred in; circulating a remonstrance petition and obtaining signatures.

(4) The remonstrance petition may be executed in several counterparts, the total of which constitutes the remonstrance petition. An affidavit of the person circulating a counterpart must be attached to the counterpart. The affidavit must state that each signature appearing on the counterpart was affixed in the person's presence and is the true and lawful signature of the signer. The affidavit must be notarized.

(5) A remonstrance petition that is not executed in counterparts must be verified by the person signing the petition in the manner prescribed by the state board of accounts and notarized.

(6) A remonstrance petition may be delivered to the county auditor's office in person or by:

(A) certified mail, return receipt requested; or

(B) any other means of delivery that includes a return receipt.

The remonstrance petition must be postmarked not later than the



1 closing date for the remonstrance period.

2 (7) The county auditor's office may not issue a remonstrance
3 petition earlier than the day that notice is published under section
4 11.1 of this chapter. The county auditor's office shall certify the
5 date of issuance on each remonstrance petition. Any person may
6 pick up additional copies of the remonstrance petition to
7 distribute to other persons.

8 (8) A person who signs a remonstrance petition may withdraw the
9 person's signature from a remonstrance petition before a
10 remonstrance petition is filed with the county auditor by filing a
11 verified request to remove the person's name from the
12 remonstrance petition. Names may not be added to a
13 remonstrance petition after the remonstrance petition is filed with
14 the county auditor.

15 (f) The county auditor shall prepare and update weekly a list of the
16 persons who have signed a remonstrance petition. The list must include
17 a statement that the list includes all persons who have signed a
18 remonstrance petition as of a particular date, and does not represent a
19 list of persons certified by the county auditor as actual landowners in
20 the annexation territory using the auditor's current tax records under
21 subsection ~~(g)~~: **(i)**. The county auditor shall post the list in the office of
22 the county auditor. The list is a public record under IC 5-14-3.

23 **(g) Not later than three (3) business days after receiving the**
24 **remonstrance petition, the county auditor shall submit a copy of**
25 **the remonstrance petition to the legislative body of the annexing**
26 **municipality.**

27 **(h) Not later than fifteen (15) business days after the legislative**
28 **body of the annexing municipality receives a copy of the**
29 **remonstrance petition from the county auditor, the annexing**
30 **municipality shall provide documentation to the county auditor**
31 **regarding any valid waiver of the right of remonstrance that exists**
32 **on the property within the annexation territory.**

33 ~~(g)~~ **(i)** Not later than fifteen (15) business days after receiving a
34 ~~remonstrance petition, the documentation regarding any valid~~
35 ~~waiver of the right of remonstrance from the annexing~~
36 ~~municipality under subsection (h), if any,~~ the county auditor's office
37 shall make a final determination of the number of owners of real
38 property within the territory to be annexed:

39 **(1) who signed the remonstrance; and**

40 **(2) whose property is not subject to a valid waiver of the right**
41 **of remonstrance;**

42 using the auditor's current tax records as provided in section 2.2 of this



1 chapter. The county auditor shall file a certificate with the legislative
2 body of the annexing municipality certifying the number of property
3 owners not later than five (5) business days after making the
4 determination.

